



United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
Western Region Office
1999 Broadway, Suite 3320
Denver, CO 80202-3050



John R. Baza, Director
Division of Oil, Gas and Mining
1594 West North Temple
Salt Lake City, UT 84116

03 DEC 2009

Dear Mr. Baza,

On October 28th, 2009 Office of Surface Mining (OSM) inspector Christine Belka conducted an oversight inspection at the Crandall Canyon Mine. As a result of that inspection OSM issued two ten day notices (TDN's) to the Division of Oil, Gas and Mining (DOGM) pursuant to 30 CFR Part 842 identifying two potential violations. The TDN's, dated November 9, 2009 are described below.

TDN #X09-140-182-001: Failure to conduct operations only in accordance with the approved permit.

The water treatment facility currently under construction at the Crandall Canyon mine has not been appropriately reviewed and approved by DOGM or incorporated into the approved permit. The regulation believed to have been violated was R645-300-142.

TDN X09-140-182-002: Failure to maintain adequate bond coverage at all times.

The current reclamation bond does not take into account the costs associated with perpetually treating iron-laden water or the eventual reclamation of the treatment facility which was under construction at the time of inspection. The regulation believed to have been violated was R645-301-812.700.

DOGM's Response to the TDN's

DOGM responded to the TDN's by letter dated November 23, 2009. In this letter, DOGM stated:

- the impoundment is being built in response to, and is necessary to abate, NO10043;
- the impoundment is located completely within the previously disturbed area;
- plans were prepared by a registered Professional Engineer (though still lacking in detail);
- a reputable company is building the impoundment;
- Genwal Resources may not direct the flow of water into the impoundment until the Division approves detailed certified plans and as-built information;
- the Division feels that further corrective action would only delay the abatement of the root problem.

The DOGM sent a Division Order (C/015/0032-DO09A) to Genwal requiring immediate action to increase the bond amount to cover long-term treatment of mine discharge water.

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DIV. OF OIL, GAS & MINING

Standard for Reviewing Responses to TDN's

After receiving a response from DOGM, OSM shall determine in writing whether the standards for appropriate action or good cause for such failure have been met. An action or response from DOGM that is not arbitrary, capricious, or an abuse of discretion under the state program shall be considered "appropriate action" if it causes a violation to be corrected or "good cause" if it shows valid reason for failure to take such action.

"Appropriate action" includes enforcement or other action authorized under the State program to cause a violation to be corrected. "Good cause" includes: (i) under the State program, the possible violation does not exist; (ii) the regulatory authority requires a reasonable and specified amount of additional time to determine whether a violation of the State program exists.

OSM's Findings and Conclusions

TDN #X09-140-182-001: Failure to conduct operations only in accordance with the approved permit.

Regulatory programs under SMCRA do require mining companies to conduct operations only in accordance with approved permits. As such, this type of water treatment facility should undergo regulatory review and approval before construction begins. OSM recognizes the urgency of abating the water quality problems at this site. OSM accepts DOGM's explanation that issuing a violation would delay the abatement of the root problem. We appreciate that no new lands were disturbed in order to construct the impoundment, the plans were prepared by a registered Professional Engineer, and a reputable company has been contracted to do the work. In light of these facts and that water will not be directed into the impoundment unless / until regulatory approval is attained and the bond is ordered to be revised as discussed below, we believe DOGM has shown good cause for not issuing a notice of violation in this instance.


TDN #X09-140-182-002: Failure to maintain adequate bond coverage at all times.

OSM finds that Division Order C/015/0032-DO09A constitutes appropriate action to cause the inadequate bond to be corrected.

OSM finds that DOGM has shown good cause for not issuing a notice of violation for TDN #X09-140-182-001 and has taken appropriate action to cause the potential violation listed under TDN #X09-140-182-002 to be abated.

Thank you for your prompt and thorough response to our concerns.

Sincerely,



James Fulton

Chief, Denver Field Division

Cc: Dana Dean